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No. 320

In the Supreme Court of the United States

October Term, 1958.

GEORGE H. BRASIER, *Petitioner,*

vs.

CLARK JEARY, PAT ASH, DAVID L. ERICKSON, HARRY BREHM, GEORGE A. MEHSER, CONRAD SCHNIDER, JACK SCHLEGEL, WELFARE SOCIETY, INC., AMERICAN FORWARD ASSOCIATION, INC., AND OTHERS UNKNOWN, *Respondents.*

PETITION for REHEARING

GEORGE H. BRASIER, *pro se*
414 West 12th Street
Tulsa 19, Oklahoma

J. A. HAYWARD,
Lincoln 8, Nebraska
Of Counsel

IN THE SUPREME COURT OF THE UNITED STATES.

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PETITION FOR REHEARING.

The petitioner, George H. Brasier, prays that this Court grant a rehearing of its order of October 20, 1958, denying the petition for writ of certiorari docketed herein on August 28 as No. 320, October Term, 1958, and further prays that upon rehearing a writ of certiorari issue to review the judgment of the United States Court for the Eighth Circuit in this case as prayed for in the petition.

Reasons for Granting a Rehearing and Issuing the Writ.

1.

This is a test case, instituted and conducted as such, involving an important question concerning the interpre-

tation of 28 U. S. C. A., Section 1654 in the light of the concepts of the equal protection of the law and the due process of the law secured by the Fifth Amendment of the Federal Constitution. It is the first case to reach this Court raising the question of whether a non-resident party appearing, *pro se*, may elect to engage co-counsel within the jurisdiction of the District Court to act as resident attorney under the same terms and conditions as attorneys (agents) for parties who have elected to engage agents to represent them.

2.

In the instant case a contract is involved (Pet. 4) wherein co-counsel agreed to act as resident attorney for a contingent consideration. He did not agree to carry the burden of the case, nor did party plaintiff, *pro se*, engage him for any purpose other than to act as resident attorney. The Circuit Court did not attempt to construe said contract.

3.

Because of the importance of the question presented in this case, it must be assumed that it will be raised again before this Court in later stages of this proceeding. It may also be assumed that this Court does not believe that this basic constitutional question is too unimportant to claim the attention of this Court and therefore should be committed permanently to the consideration of the lower Federal tribunals.

In these circumstances, it is submitted that this Court should and ought to grant a writ of certiorari at this time.

The question decided by the Court of Appeals is fundamental to the further conduct of the case and one that should be reviewed by the Court now.[1]

"A final and definitive decision by this Court is needed to remove any doubt as to the rights and privileges of petitioner in the conduct of the instant controversy."[2]

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1 The District Court in its opinion has set forth an ultimatum that party plaintiff, *pro se*, will not be permitted to conduct and manage the instant controversy; that to so permit same would disturb the orderly administration of judicial processes (App. A). The Circuit Court in the conclusion of its opinion, stated appellant's Complaint asserted many ramifications and inferred that the trial would be "potentially complicated," and that: "It may be, as suggested by the Court of Appeals of the District of Columbia in *Overholser v. De Marcos, supra*, that in rare circumstances it might be good practice and could aid in the fair presentation of claim or defense if a party were allowed to actively participate in the conduct of the trial, even though represented by counsel." (App. B).

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2 The judgment of the Court of Appeals is not such a final and definite decision. Admittedly the order of this Court denying the petition for writ of certiorari adds nothing to the authority of the opinion of the Court of Appeals. This Court has repeatedly admonished the bar and litigants that a denial of a petition for a writ of certiorari cannot be taken as indicating any view on the merits of the case. *United States v. Carver*, 260 U. S. 482; *House v. Mayo*, 324 U. S. 42; *Brown v. Allen*, 344 U. S. 443

Conclusion.

For all the foregoing reasons the petitioner prays that this petition for rehearing be granted, and that upon rehearing his petition for writ of certiorari be reinstated and granted.

Respectfully submitted,

GEORGE H. BRASIER, *pro se*
414 West 12th Street
Tulsa 1 Oklahoma

J. A. HAYWARD,
Lincoln 8, Nebraska
Of Counsel

AMENDED CERTIFICATE

I, George H. Brasier, hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and is restricted to the grounds mentioned in Rule 58 (2) of this Court, and that copies of same have been served as prescribed by Rule 33 of the Rules of this Court.

George H. Brasier